

31 August 1972

MEMORANDUM FOR: SA/Information Control

SUBJECT : "Intelligence Sources and Methods"

1. You have relayed to us Mr. Colby's suggestion that we attempt to define for the Director "intelligence sources and methods" in such a fashion that he can present it to the USIB membership for its guidance. You state also that the question of the Director taking the lead of the intelligence community in defining the term keeps recurring. The Army and the Navy, you advise, are doing nothing about defining this category of information to subordinate commands. Mr. Colby's suggestion arose in the course of a discussion of OGC 72-1088, which in turn was addressed in part to the question of the Director's authority to act within the community to protect intelligence sources and methods. And finally, all of the foregoing derived from consideration of declassification problems under E. O. 11652.

2. Apparently, the first use of the term was in the Presidential Order of 22 January 1946, "Coordination of Federal Foreign Intelligence Activities", which established the National Intelligence Authority and the Central Intelligence Group. The Order provided that in the conduct of their activities NIA and the Director of Central Intelligence "shall be responsible for fully protecting intelligence sources and methods". It then appeared in the CIA statutory charter, in a proviso to section 102(d)(3) of the National Security Act, and of course continues today in that amended statute. (Note that in 102(d)(3) the language differs from the corresponding language of the January 1946 directive in that in the former the words "from unauthorized disclosure" are added at the end of the phrase.) The concept has received additional Congressional recognition. It is "in order further to implement" that proviso that section 6 of the CIA Act, as amended, exempts the Agency from provisions of law which require the publication or disclosure of the organization, functions, names, official titles, salaries and numbers of personnel employed by the Agency. It "is in order further to implement" that proviso that section 201(c) of the CIA

Retirement Act provides that "any determinations by the Director authorized by the provisions of this Act shall be deemed to be final and conclusive and not subject to review by any court." Judicial recognition was given in Heine v. Raus in which the United States Court of Appeals (Fourth Circuit) concluded that the statute authorizes and instructs the Director to protect intelligence sources. The Court stated "that aliens within this country are sources of foreign intelligence, as claimed by the Director, has been recognized by the Congress", citing in this regard the provisions of section 7 of the CIA Act which permit an alien to enter the U. S. for permanent residence whenever the Director determines that such entry "is in the interest of national security or essential to the Agency's intelligence mission". The term is included in that most basic of National Security Council Intelligence Directives, namely NSCID No. 1, and in at least one Director of Central Intelligence Directive (DCID 1/7). And finally, it is included in E. O. 11652, but was not in the predecessor E. O. 10501. In a memorandum to Admiral Raborn just before the Admiral became Director, in April 1965, Mr. Houston said, with reference to the language of the proviso in section 102(d)(3):

This is a responsibility with little or no legislative history. The words first appeared in the Directive issued by President Truman on 22 January 1946, which set up the Central Intelligence Group, predecessor of CIA. So far as we can ascertain, when the military services realized that there would be a central system which would have access to their clandestine sources and methods they wished to make sure that the director of that central system would be responsible for protecting their sources and methods. However, the general nature of the language which was incorporated in the statute has been construed, insofar as it has been considered by the Congress at all, as an overall responsibility for protecting intelligence sources and methods.

3. All of this would suggest that E. O. 11652 does not pose the definition problem. In that Order the term surely means whatever it meant before, in the legislative, judicial and executive usage set out above.

4. In none of the foregoing is there a definition of the term. We could put together definitions based on Webster's definitions of the three terms, "intelligence," "sources," and "methods," which would read substantially as follows:

intelligence sources — persons or things from which secret information, as for military or police purposes, is or may be gotten.

intelligence methods — ways, modes, procedures or processes of getting secret information, as for military or police purposes.

They could be expanded by rephrasing: "as for military, police, economic, political or other purposes." But the definitions would seem to add nothing to the obvious.

5. It may well be that the absence of definition is neither accidental, nor unwise. A major objection to any effort to define would be that any definition specific and detailed enough to be useful almost certainly would become obsolete promptly or would be deficient when written because an activity or item in fact includable within the concept was omitted inadvertently. In short, we wonder if it is desirable to attempt to introduce a specific definition into USIB channels, having in mind also the fact that DCIDs are issued "after appropriate consultation."



Associate General Counsel

25X

K1 OGC:  in

K1 Original - Addressee

1 -  signer

1 - SECURITY-E.O. 11652-Classification & Declassification subj ✓

1 - Chrono

w/OGC 72-1124

1 August 1972

MEMORANDUM FOR: Associate General Counsel

SUBJECT: "Intelligence Sources and Methods"

Dick,

The question of the Director taking the lead relative to the Intelligence Community in defining "intelligence sources and methods" keeps recurring. In my discussions to date with the Army and Navy, both services are doing nothing about defining this category of information to subordinate commands.

Bernie Drell had previously raised a related question to which you responded in OGC 72-1088. Your memo was discussed at Bill Colby's morning meeting today. Bill's suggestion is that we attempt to define for the Director "intelligence sources and methods" in such a fashion that he can present this to the USIB membership for its guidance.

I would appreciate any thoughts you have on this.



Special Assistant for Information Control

25X

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
UNCLASSIFIED	CONFIDENTIAL		
OFFICIAL ROUTING SLIP			
TO	NAME AND ADDRESS	DATE	INITIALS
1			
2			
3			
4			
5			
6			
	ACTION	DIRECT REPLY	PREPARE REPLY
	APPROVAL	DISPATCH	RECOMMENDATION
	COMMENT	FILE	RETURN
	CONCURRENCE	INFORMATION	SIGNATURE
Remarks: <div style="font-family: cursive; font-size: 1.2em;"> Dick, I'm not real sure we want to get too specific on this JAH 8/2/72 </div>			
FOLD HERE TO RETURN TO SENDER			
FROM: NAME, ADDRESS AND PHONE NO.			DATE
			1 Aug 72
UNCLASSIFIED	CONFIDENTIAL	SECRET	

FORM NO. 1-67

237

Use previous editions

(40)

NOTE ATTACHED TO OGC 72-1124. MEMORANDUM FOR ASSOCIATE GENERAL COUNSEL DATED 1 AUGUST 1972